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COMMITTEE AGAINST TORTURE

Seventeenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 273rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 November 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.273/Add.1).

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

SECOND PERIODIC REPORT OF ALGERIA (continued) (CAT/C/25/Add.8)

1. At the invitation of the Chairman, Mr. Dembri, Mr. Hamed-Abdelouahab, Mr. Hassaine and Mr. Soualem (Algeria) took places at the Committee table.

2. The CHAIRMAN invited the Algerian delegation to reply to the questions raised by the members of the Committee at the preceding meeting.

3. Mr. DEMBRI (Algeria) said that his delegation would reply to the best of its ability to the questions raised and that he would explain how the democratic infrastructure was being strengthened in Algeria, beginning with details on the pre-eminence of the Convention over legislation. Some members of the Committee had been concerned at the fact that certain conventions ratified by Algeria had not been published in the Journal Officiel, which might create a risk of contradiction between international law and internal law. When the decree ratifying a convention was promulgated, the convention was transmitted to all the bodies concerned with a view to incorporating its provisions into internal law; the decree of ratification itself was published. That was the usual practice, and it was true that many conventions had never been published as annexes to the Journal Officiel. Article 123 of the 1989 Constitution, however, explicitly stated that the treaties ratified by the President were superior to the law: they ranked second, after the Constitution. A law that was contrary to the provisions of a ratified convention could not be applied, since the convention could be invoked directly in the courts. That principle had been reaffirmed by the Constitutional Council, which in a decision of 20 August 1989 relating to the electoral code had reaffirmed that when a convention was ratified it became part of internal law, and that the Constitution invested it with higher authority than the laws and authorized every Algerian citizen to invoke it in the courts. Thus there was absolutely no ambiguity, but he had taken note of the Committee's wish to see international conventions published as annexes to the Journal Officiel whenever possible.

4. Several members had asked about the limits on and institutional framework of states of emergency. Article 86 of the Constitution stated that, in case of compelling necessity, the President of the Republic, after convening the High Council of Security and consulting the President of the National People's Assembly, the Head of Government and the President of the Constitutional Council, could declare a state of emergency or a state of siege, and take all necessary measures to restore normality. The duration of the state of emergency or state of siege could not be extended except with the approval of the National People's Assembly. Article 87 of the Constitution set forth the three circumstances in which a state of emergency might be declared, namely when Algeria was threatened by an immediate danger to its institutions, its independence or its territorial integrity. Thus the principle of equality was respected, since a state of emergency had to be proclaimed by the competent authority, namely the Head of State; the principle of notification was also respected since, pursuant to the provisions of

article 4 of the International Covenant on Civil and Political Rights, Algeria had notified the other States parties of its decision to institute a state of emergency. The principle of limitation in time was directly linked to that of proportionality: the duration of the state of emergency depended on the gravity of the threat to the nation. It was true that the Constitution did not set a time-limit on the state of emergency, which came to an end when the reasons for proclaiming it disappeared. However, the constitutional reform included a new article stipulating that the state of emergency and state of siege would be governed by an organizational act.

5. Questions had been asked about preventive custody or administrative detention measures. Administrative detention centres had not been in existence since November 1995. Previously, the legal requirements for custody measures had been governed by Executive Decree No. 92/75 of February 1992, the Decree of 24 April 1992 had stipulated that the subject of an internment measure, or his family or lawyer, could lodge an appeal against that measure. A joint regional appeals council (including representatives of the authorities and civil society) had to issue its decision within 15 days. That provision applied to all persons placed in custody centres who had lodged appeals. Decree No. 92/44 of February 1992, had also made it possible to lodge an appeal with the courts against the prohibition on working which could be ordered by the Minister of the Interior.

6. Questions had been asked about the National Human Rights Observatory, especially its independence. The Observatory, which enjoyed complete administrative and financial autonomy, was an evaluation and observation body whose mission was threefold: awareness-raising in human rights matters, action when human rights were violated and submission of an annual report. The method of appointing its members showed how representative it was: the President of the Republic appointed four members, the President of the National People's Assembly appointed four and the President of the Constitutional Council also appointed four; the National Mujahidin Organization, the Supreme Islamic Council, the Supreme Judicial Council and the Bar Association each designated one member; and 12 members, 6 of whom had to be women, were designated by all the national human rights organizations. Many more members of the Observatory were thus designated by civil society than by the authorities. The Observatory had regional representatives in all the wilayas; its President had been elected to the African Commission on Human and Peoples' Rights in 1995, and one of its members, who held the human rights chair at the university of Oran, was a member of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. He rejected the opinion expressed at the preceding meeting that the Observatory merely reflected the authorities' point of view, and to make things absolutely clear he would provide the Committee with the two reports prepared by the Observatory since its establishment; its reports were submitted to the President of the Republic and then immediately made public.

7. With regard to freedom of the press, there was no actual censorship in Algeria. Information affecting security, however, was controlled, but that was done exclusively in the framework of the emergency legislation; in all other areas, there was complete freedom of expression and no sanctions other than those set forth in the Information Act were applied. It should be emphasized that the controlling of information affecting security was no

different from that practised elsewhere. During the Gulf War, for example, all information on hostilities was controlled by the States concerned; in certain countries terrorist activity had led the authorities to prohibit newspapers from reporting the terrorist groups' demands and statements. It had to be acknowledged that, however great the desire to expand freedom of expression, such practices were common in organized human societies. The Algerian press was highly pluralistic and included over 170 very diverse publications.

8. He was surprised to hear remarks about the existence of militias in Algeria, for the country's security apparatus did not include any militias; in addition to the army and the police, a communal police force had recently been established under a previously existing law, as well as self-defence groups which had perhaps erroneously been considered to be militias. Algeria covered 2,200,000 km^2, and it was obvious that the security services alone could not thwart terrorist activities over such a large area; their effectiveness depended on their mobility, but in the more remote areas the people had asked to assist the authorities in matters of local security. The members of the self-defence groups had been placed under the authority of the national gendarmerie and the training they received included basic legal concepts. Far from being militias, those groups had a sound legal basis in the 1987 Popular Defence Act. The communal guard had been established by executive decree in August 1996. It was important not to confuse such groups, especially as some parties referred constantly to the concept of militias in their platforms; one of them even contended that the people were being held hostage between two opposing forces.

9. Reference had been made to the events at Serkadji prison. Three inquiries had been held following the events, one by the Ministry of Justice, the second jointly by the Ministry of Justice and the Ministry of the Interior and the third by the National Human Rights Observatory acting on its own initiative. In conducting its inquiry the Observatory had directly contacted all the human rights associations as well as lawyers; some had replied favourably and others not, but the inquiry had been conducted with complete transparency. He noted in that connection that the mutiny at Serkadji had begun with the murder of four detainees, rather than one as had been stated: some of the facts had been distorted. Regarding prison conditions in general, the Government had shown its desire for transparency by asking the International Committee of the Red Cross to visit Algeria to inquire into prison conditions there; the mission of inquiry would be held shortly, and a similar invitation was extended to all non-governmental organizations wishing to explore the matter further.

10. Mr. HAMED-ABDELOUAHAB (Algeria), replying to another series of questions, noted that it had been asked how Algeria interpreted the term "reasonable ground" in article 12 of the Convention. He explained that the Department of Public Prosecution was responsible for instituting proceedings in accordance with article 33 of the Code of Criminal Procedure; if it deemed an inquiry into torture appropriate, it could open one even if the victim had not filed a complaint. As soon as an offence occurred, the Department of Public Prosecution was competent to open an inquiry, identify those responsible and bring them before the courts. The Department could also close a case, but only when the facts brought to its attention could not be

qualified as criminal. If it closed a case for which the facts had been established, it had to account for its actions to the Supreme Judicial Council, which could order it to appear before a disciplinary council. The victim of the offence could also institute criminal proceedings by filing a complaint directly with the examining magistrate. A victim could therefore overcome failure to take prompt action by the Department of Public Prosecution, and the complaint, once submitted to the examining magistrate would be transmitted to the Attorney-General of the Republic, who decided whether or not to open an inquiry; in the event of a refusal, the examining magistrate could still order a judicial inquiry opened, but the Department of Public Prosecution could appeal to the indictment division to overturn the examining magistrate's order. The indictment division ultimately decided whether or not to institute proceedings.

11. In reply to another question, he said that penalties could be imposed if the time-limit for police custody was exceeded. Pursuant to article 51 of the Code of Criminal Procedure, any violation of the provisions governing police custody made a police officer liable to the penalties laid down for arbitrary detention.

12. Reference had been made at the preceding meeting to a number of cases of disappearance and torture. Out of a desire to cooperate, the Algerian authorities had already replied to the communications transmitted to it by the Centre for Human Rights. Two cases would serve as examples. The first was that of an Algiers lawyer who, it was claimed, had been abducted by the police, when it turned out that he had merely been detained. The man in question had been arrested in connection with a case of terrorism, and when he had appeared before the examining magistrate, the latter had asked a physician to examine the prisoner, who although in a satisfactory state of health, had a bruise on his cheek. An inquiry had convinced the judge that the bruise had been due to the circumstances under which the arrest had taken place, as the person in question had resisted. On another matter, in connection with a communication from the Working Group on Enforced or Involuntary Disappearances, the authorities had opened an inquiry into the case of Dr. Mohammed Ziou, whom they had found at his home. According to the duly-established record of the proceedings, when brought before the prosecutor, Mr. Ziou had stated that he had been arrested in November, held in custody for two days and brought before an examining magistrate, who had released him on bail; the next day, he had resumed his duties at the hospital and was surprised to hear that he had been reported missing. It was surprising to hear yet another reference to those two cases when in fact they had been clarified by the Algerian authorities.

13. With regard to the definition of torture, although the definition contained in article 110 of the Penal Code did not correspond exactly to that contained in the Convention, it was very close to it. As part of the current reform of the Penal Code, every effort was being made to incorporate the provisions of international conventions in domestic legislation.

14. One member of the Committee had found the 12-day time-limit on police custody, as set forth in article 51 of the Code of Criminal Procedure, to be too long. He explained that the time-limit on police custody, which was 48 hours for ordinary offences, could be doubled for acts threatening

State security and extended to a maximum period of 12 days for crimes classified as terrorist and subversive acts. Terrorist crimes were carried out by networks which had national, and even international, dimensions, and the time-limit had been extended in order to give police officers time to trace the chain of command. In some European countries, time-limits on custody were also doubled for offences related to terrorism and drug trafficking. The pre-trial detention period was four months, renewable once in cases involving offences and twice in cases involving crimes. In exceptional cases involving crimes, the examining magistrate could issue a reasoned order asking the indictment division for a supplementary four-month period; the maximum time-limit for pre-trial detention was therefore 16 months.

15. One member of the Committee had expressed concern at the fact that the provisions of the anti-terrorist laws had been inserted into the Penal Code and Code of Criminal Procedure, which made them permanent. In fact the inclusion of the offence of terrorism in the Penal Code had made it possible clearly to define the components of that offence and thus avoid abuses. Four changes had been made in the Code of Criminal Procedure: devolution of competence in matters of terrorism to the officers of the judicial police, under the supervision of the public prosectors; the fact that the Attorney-General could use all information media to publish notices and photos of persons being sought for terrorist crimes; the possibility of extending the custody period to 12 days; and the fact that in terrorism cases, searches and inspections could be carried out in the absence of the suspect. The latter provision had also been adopted by some European countries in their efforts to combat terrorism. In that context, it should be emphasized that, while in certain European countries the courts in the capital were the only courts recognized as competent to try terrorism cases, in Algeria the special courts had been abolished and the criminal courts were competent to try all cases relating to crimes of terrorism.

16. Concerning the independence of judges, he said that judges were recruited from among the holders of law degrees on the basis of competitive examinations and followed a two-year training course at the National Institute of the Judiciary. The Supreme Judicial Council was a constitutional institution of 15 members, whose President was the President of the Republic, and Vice-President the Minister of Justice; the other members were the first President and the Procurator-General of the Supreme Court, six magistrates elected by their peers, four members designated by the President of the Republic from among the holders of a university degree and the Director of Criminal Prosecutions, the Director of Civil Prosecutions and the Director of Personnel of the Ministry of Justice. The profession of lawyer was a liberal profession and the conditions for practising it were governed by the Act Organizing the Legal Profession (Act No. 91-04 of 8 January 1991) and a series of subsequent provisions. Lawyers had the right to communicate freely with their clients as soon as the client was detained and to participate in all examination proceedings. Members of the Bar were protected from all outside interference and performed their duties with complete freedom.

17. One member had asked about restrictions on freedom of movement. An Algerian national could not be the subject of an expulsion measure; house

arrest (Penal Code, art. 11) and denial of residence (Penal Code, art. 12) were applicable only as accessory penalties.

18. THE CHAIRMAN thanked Mr. Dembri and Mr. Hamed-Abdelouahab for their precise replies and invited the members of the Committee to request further clarifications.

19. Mr. PIKIS said he would like clarifications on one of the cases of ill-treatment mentioned: had the bruise on the cheek of an arrested person been caused during the interrogation? It would be interesting to know in that connection whether individuals being interrogated had the right not to reply and what value was given to confessions obtained during such interrogations. It would also be useful to know the exact number of complaints filed by detainees for ill-treatment, the number of officials prosecuted for ill-treatment and the number of officials who had been subjected to disciplinary measures.

20. Mr. GONZALEZ POBLETE said he understood that, although international instruments were equal in rank to laws as soon as they were ratified, they were not necessarily published in the Journal Officiel. Publication in the Journal Officiel, however, was an essential means of publicizing the instrument, since no one was deemed to be ignorant of the law. It would therefore be useful to know how the public was made aware of the contents of conventions. It would also be interesting to know the conditions for the application of denial of residence or house arrest measures mentioned in paragraph 19 of the report, concerning which it had been stated that, pursuant to the presidential decree on the state of emergency, they could only be accessory penalties.

21. Mr. BURNS asked for clarifications on the incorporation of international law in Algerian legislation. According to a 28 August 1989 decision by the Constitutional Council, international treaties which had been ratified were apparently not fully incorporated into Algerian legislation until they had been published in the Journal Officiel. To his knowledge, the Convention against Torture had not been published in the Journal Officiel.

22. Mr. CAMARA noted that he had asked whether the Wali and Regional Appeals Council were judicial or administrative bodies. On another matter, he wondered whether he had understood Mr. Dembri correctly, as having stated that conventions and treaties were ranked after the Constitution; what was the situation in the event of a conflict between the Constitution and international treaties?

23. The CHAIRMAN, speaking as a member of the Committee, endorsed Mr. Burns' remarks. He would also like to know whether Algeria contributed to the United Nations Voluntary Fund for Victims of Torture.

24. Mr. DEMBRI (Algeria), referring to the ranking of legal instruments, said that it went without saying that ratification by Algeria of any convention was followed by changes in the Constitution, as necessary. It was therefore not possible for there to be any conflict between international treaties and the Constitution. Publication of a convention meant publication of the presidential decree ratifying the Convention. International treaties

were publicized through the Journal Officiel, as well as in the records of debates in the National People's Assembly. Generally speaking, the practice of incorporating international instruments in domestic law was constantly being refined and improved.

25. Mr. SOUALEM (Algeria) said that the public was informed of the adoption of international instruments not only by the means described by Mr. Dembri, but also through the procedure whereby the Minister for Foreign Affairs presented the instrument to be ratified to the Foreign Affairs Committee of the Parliament. Information about international instruments was also disseminated through the holding of seminars for judges and court officers. During the previous year, for example, a human rights seminar had been held in Algiers with the participation of 20 or so NGOs, and the following year, the African Commission on Human and Peoples' Rights would be holding its session in Algeria.

26. Mr. HAMED-ABDELQUAHAB (Algeria) said that there had been a misunderstanding regarding the case where a doctor had noticed bruises on a prisoner's body; the bruises had been caused during arrest and not during interrogation. An accused was not bound to reply to questions asked by an officer of the judicial police, an examining magistrate or even a court. With regard to the value of confessions obtained during preliminary inquiries, Algerian legislation stipulated that the police report on the preliminary inquiry was valid only for information purposes. The examining magistrate took every case from the beginning. Some members of the Committee had been disturbed by cases of ill-treatment of detainees during custody by members of the police or security services. A number of members of the police and armed forces, communal guards, gendarmes and self-defence groups had in fact been responsible for such ill-treatment. A total of about one hundred cases were involved; they had been brought before the courts and those responsible had been remanded in custody. Some had already been tried and convicted. Concerning restrictions on freedom of movement, ordinary legislation provided for house arrest and denial of residence in certain cases. The presidential decree on the state of emergency also made it possible to restrict or forbid the movement of persons at specific times and in specific places, but those were exceptional measures, derogations by definition from ordinary legislation, for reasons of security.

27. Mr. SOUALEM (Algeria), referring to the placement in a custody centre of a person who was a threat to public order or public safety, said that an appeal could be lodged against the measure with the Regional Appeals Council, which generally reached a decision within 15 days. The Regional Appeals Councils were made up of the Wali, as the State representative at local level, and leading local figures.

28. Mr. DEMBRI (Algeria) said that Algeria contributed to the United Nations Voluntary Fund for Victims of Torture and that its last payment, of an amount equivalent to $5,000, had been made a few months earlier.

29. The CHAIRMAN thanked the Algerian delegation for its spirit of cooperation and openness.

30. The Algerian delegation withdrew.

31. The CHAIRMAN said that the Committee would examine the draft conclusions and recommendations on the consideration of the periodic report of Algeria in a closed meeting.

The public meeting was suspended at 4.40 p.m. and resumed at 5.55 p.m.

Second periodic report of Algeria: Conclusions and recommendations of the Committee (document without a symbol)

32. At the invitation of the Chairman, the delegation of Algeria resumed places at the Committee table.

33. Mr. CAMARA (Country Rapporteur) read out the conclusions and recommendations of the Committee on the second periodic report of Algeria:

"The Committee considered the second periodic report of Algeria (CAT/C/25/Add.8) at its 272nd and 273rd meetings held on 18 November 1996 (CAT/C/SR.272 and 273) and adopted the following conclusions and recommendations:

A. Introduction

1. The Committee welcomes the presentation of the second periodic report of the People's Democratic Republic of Algeria and thanks the Algerian delegation for its oral introduction to that report.

2. The Committee thanks the delegation for its willingness to engage in dialogue with the Committee and for the valuable information it provided on the situation in Algeria.

B. Positive aspects

1. The Committee notes with satisfaction Algeria's commitment to institutionalize the rule of law and promote the protection of human rights as evidenced, inter alia, by its accession to the International Covenant on Civil and Political Rights, the Convention against Torture (without reservation and with declarations under articles 21 and 22) and the African Charter on Human and Peoples' Rights.

2. The Committee also notes with satisfaction the adoption of new legislation: provisions under the Penal Code and Code of Criminal Procedure, legislation making torture a crime and making searches subject to the consent of the householder and to a court warrant, limits on the duration of pre-trial detention, and the introduction of court supervision as an alternative to pre-trial detention.

3. It likewise welcomes the establishment, in May 1995, of the Office of Ombudsman and closure of the detention centres, and the fact that human rights organizations have been authorized to visit Algeria.

4. The Committee thanks the State party for its contribution to the United Nations Voluntary Fund for Victims of Torture.

5. The Committee has learned with great satisfaction of the proposed amendment to the Constitution, the plans to set up a Council of State, the creation of the National Human Rights Observatory and the scheduling of legislative and municipal elections over the period from March to June 1997.

C. Factors and difficulties impeding the implementation of the Convention

The Committee is quite well aware that, in the current period of transition and in the light of the prevailing endemic and multifarious violence, there are impediments to the effective implementation of all provisions of the Convention.

D. Subjects of concern

The Committee is concerned that:

1. Torture is not more fully defined, in conformity with article 1 of the Convention;

2. Detention in custody can be extended to 12 days;

3. Decree 92/44 of 9 February 1992 allows the Minister of the Interior or his nominee to order administrative placements in custody centres with no judicial supervision;

4. While welcoming the fact that the death penalty has not been enforced since 1993, the Committee is still concerned at reports from human rights organizations concerning extrajudicial executions, disappearances and a rising incidence of torture since 1991, after torture had virtually ceased between 1989 and 1991.

E. Recommendations

While it is aware of the difficulties posed by the existence of terrorist groups, the Committee reminds the State party that torture is not warranted in any exceptional circumstances; in that light, it recommends that:

1. To avoid any ambiguity, the State party should arrange for the full text of the Convention against Torture to be published in the Official Gazette;

2. The definition of torture should be revised to bring it into closer conformity with article 1 of the Convention;

3. The State party should plan to ensure that the judiciary can truly wield the authority internationally recognized as belonging to the judiciary;

4. Steps should be taken to ensure that only a judicial authority can take decisions restricting individual liberty;

5. In accordance with its obligations under various conventions, particularly article 12 of the Convention against Torture, the State party should ensure that an inquiry is mounted promptly whenever there is reasonable ground to believe that an act of torture has been committed in territory under its jurisdiction and should ensure that the results of the inquiries are published;

6. The Committee should be given information on all the individual cases raised during the presentation of the second report on the basis of allegations by human rights organizations."

34. Mr. DEMBRI (Algeria) said that he had listened closely to the conclusions and recommendations read out by Mr. Camara; he commended the intellectual rigour and integrity shown in preparing the text, which corresponded very closely to the dialogue that had taken place between the Committee and his delegation. In the history of human societies, progress had always been achieved through voluntary dialogue rather than unilateral injunctions. Algeria wished to be transparent and was not seeking to conceal the difficulties involved in the changes it was experiencing. It sought guidance and advice in its transition towards pluralism. Modern Algeria respected its time-honoured social traditions, but aspired to be modern and open to universal civilization. In the transition from the single-party to the pluralist system, individuals aspired to become the masters of their fate, whereas in the past they had merely mouthed the doctrines forced upon them. He was particularly pleased at the Committee's condemnation of terrorism. Terrorist intrigues would not come to fruition and, in any event, had no place in a democracy. Algeria's legislation did need to be extended and made more human. He appreciated the high quality of his delegation's dialogue with the Committee and reiterated his country's commitment to pursuing dialogue and continuing further along that path.

35. The CHAIRMAN thanked the Algerian delegation for its dialogue with the Committee, which had been open, instructive and honest.

36. The delegation withdrew.

The meeting rose at 6.15 p.m.